

**Before the Hearing Panel appointed by Canterbury
Regional Council**

IN THE MATTER OF The Resource Management Act
1991

AND

IN THE MATTER OF Application CRC082271 by
Haldon Station Limited for a
discharge permit to discharge
water at two locations into Stony
River.

Section 42A Officer's Report of Susannah Vesey

Date of Hearing: September 21st 2009

1. This report should be read together with the introductory s42A report which gives an overview of all applications presented at this hearing (Report 1), the overview and technical reports on hydrology and minimum flows (Report 2A and 2B), the report outlining annual allocations (Report 3) and the reports on cumulative landscape and water quality effects in the catchment (Reports 4(a-f) and 5).

INTRODUCTION

2. Haldon Station Ltd (the applicant) have applied for a resource consent to:
 - (a) discharge water from an irrigation intake race at a maximum rate of 40 litres per second at or about map reference NZMS 260 I39:9725-4524 from where it enters Stony River; and
 - (b) discharge irrigation bywash water at a maximum rate of 150 litres per second from a settling pond into Stony River at or about map reference NZMS 260 I39:9204-4662.
3. See Attachment One for a map of the location of the proposed activities.
4. Mr Richard de Joux of Environmental Consultancy Services submitted the initial AEE on behalf of the applicant.
5. The applicant seeks a duration of 35 years. This is an application for a replacement consent.

Background

6. As part of this proposal, the applicant has also applied for water permit CRC082269 – to divert, take and use water; CRC082270 – to dam water, and permit for works in the bed of Stony River CRC082268. Refer to Report 18A for background information describing the applicant's proposal as a whole and also for the description of the affected environment.
7. I met with Mr Paddy Boyd at Haldon Station on 27 January 2009 where I was shown relevant aspects to the proposal.

Notification and submissions

8. Details of the notification and wording are contained in Appendix 4 of the introductory s42a report (Report 1). This consent was publicly notified in May 2008.
9. Details of all submissions received for this proposal are summarised in Table 1 of Report 18A. There were no submissions regarding this application as it stands by itself.

DESCRIPTION OF THE PROPOSED ACTIVITY

10. The applicant has applied to carry out the proposed activities under the following conditions:
 - (a) The minimum rate at which water is discharged from the fish screen structure at or about map reference NZMS 260 139:9725-4524 shall be as follows:
 - (i) 40 litres per second whenever the surface flow in Stony River at the intake at or about map reference NZMS 260 139:9828-4484 has ceased; and
 - (ii) Y litres per second at all other times.

These flow rates to be confirmed with Central South Island Fish and Game Council.
 - (b) The rate at which irrigation bywash water is discharged from a settling pond into Stony River at or about map reference NZMS 260 139:9204-4662 shall not exceed 150 litres per second.
 - (c) Discharges shall not cause erosion to the banks and/or bed of Stony River.
11. The border-dyke irrigation by-wash water is collected in a series of settling ponds from where the downstream discharge is proposed. I note that water is also to be taken from this pond for the spray irrigation of some additional land (application CRC082269 discussed in Report 18A). Given the abstraction of water from this pond for irrigation also, it may not be likely that a continuous discharge at the downstream location will occur.
12. A minimum flow of 200 litres per second (downstream of the discharge at Hinch Bend) has been proposed on the associated water permit CRC082269. The proposed discharge from the settling pond allows the applicant to “augment” the flows at the minimum flow location.

LEGAL AND PLANNING MATTERS

Consent Requirements

13. An overview of the consent requirements under the Resource Management Act (RMA), Transitional Regional Plan (TRP) and Waitaki Catchment Water Allocation Regional Plan (WCWARP) for discharge permit applications is provided in the introductory s42A report (Report 1). A summary of the requirements for this application is provided below:

TRP

14. There are no provisions of the TRP which authorise the discharge of water into water as described in the proposed activity. As such the proposed activity is to be treated as a **discretionary** activity in accordance with section 77C(1)(a) of the RMA.

PNRRP

15. Rule WQL1 – It is not clear whether or not the proposed discharge would comply with conditions (1) to (9) of this rule and as such cannot consider this to be a permitted activity.
16. Rule WQL56 – classifies the discharge of water into a river as a discretionary activity. The discharge of water is into a river that is identified as “Natural” water quality. Schedule WQN1 indicates the natural quality of the water and bed substrate shall not be altered in rivers and lakes identified as “natural”. As such the proposed activity cannot comply with condition (4).
17. Rule WQL60 – classifies the discharge of a contaminant into water as a non complying activity.
18. Overall, proposed discharge permit CRC082271 is a **non-complying** activity under Rule WQL60 of the PNRRP and resource consent is required in accordance with section 15 of the RMA.

DESCRIPTION OF THE AFFECTED ENVIRONMENT

19. Please refer to Report 18A for a description of the affected environment.

Assessment of actual and potential effects (s104(1)(a))

20. The effects that have been considered for this type of activity (discharge of water) are presented in the introductory s42A report (Report 1). That report includes the identification of the relevant planning provisions which direct us to consider these effects. A summary table’s regarding the assessment of individual effects for this application is provided below and a detailed discussion of those outstanding matters or areas of concern is provided in the following sections.
21. Given that I am satisfied that subject to mitigation, effects will be minor and there are no outstanding matters of contention I have not discussed the assessment of effects further.
22. Where mitigation is referred to in these tables, I am referring to the recommended conditions listed at the end of this report. The recommended conditions take into consideration those proposed by the applicant, however may have been re-worded to ensure that they are certain, mitigate an effect and are enforceable.

Adverse Effects	Applicant’s assessment	IO audit	Conclusion
Erosion of bed and banks	Discharge channel armoured with moderate sized boulders and is very stable. No evidence of erosion in past.	I note that the application was notified with a discharge of 40 litres per second at the headrace; however I note that due to the nature of the irrigation infrastructure it will be difficult for the applicant to restrict the rate of discharge at this location.	Effects minor.

		Agree discharge channel well lined with rocks. No indications of erosion evident during my site visit. Consider that even with higher discharge rate, erosion of bed and banks unlikely. Recommend metering to ensure compliance with proposed discharge rates. Conditions (2),(3) and (6)	
Water quality and ecosystems	No adverse effect within receiving water as discharge is controlled by requirement to maintain constant head of water at the control structure. Generally slow variations in rate over time.	No change to water quality as simply diverted along short distance of diversion channel. Proposed discharge allows for fish passage into lower reach of Stony River, however the stretch of river below here goes dry naturally.	Effects minor.
Flood-carrying capacity	No assessment provided	Stream channel below discharge location often dry during summer months. Due to open nature of channel and surrounding land consider flood-carrying capacity will not be affected. Conditions (4) and (5)	Effects minor and acceptable
Downstream users and amenity values	No assessment provided	Stony River naturally flows subsurface between the two discharge locations.	Effects minor and acceptable
Tangata Whenua values	No assessment provided	Submission did not specifically relate to discharges. Quality of water to be discharged at this location considered to unchanged from that diverted.	Effects minor

Table 2: Bywash settling pond discharge			
Adverse Effects	Applicant's assessment	IO audit	Conclusion
Flood-carrying capacity and erosion of bed and banks	No assessment provided, however Mr de Joux has provided Photo 1 below illustrating nature and capacity of discharge channel.	I note the River is well established below the discharge location. The discharge from the settling pond will be manually controlled. The discharge has been occurring for a number of years at this location. Conditions (4) and (5)	Effects likely to be minor.
Downstream users and amenity values	No assessment provided	Discharge to Stony River augments flows which ensure river below Homestead Bridge flows during irrigation months. Condition (4)	Effects minor
Water quality and ecosystems	Sampling results show some decrease in water quality but this is mitigated by augmenting effect on lower reaches of Stony River during times of low flow.	Agree there is likely to be some degradation in water quality in Stony River at this point given border-dyke by-wash water. The applicant has developed a number of settling ponds to help remove sediment and contaminants from water. Agree discharge will augment the flow in Stony River which will lessen the occurrence of fish being stranded in remnant pools as has occurred in the past.	Effects uncertain

		Note submissions concerned about water quality and recognise Stony River is a good fishery and spawning stream. Memo from Dr Meredith included as Attachment 10 of Report 18A.	
Tangata Whenua values	No assessment provided	Submission did not specifically relate to discharges. However I am unable to determine effects on water quality and so cannot determine effect until heard submission.	Effects uncertain



Photo 1: Haldon Station discharge channel below settling ponds. Flow in race 362 litres per second. Provided by Richard de Joux, 21 July 2009.

Effects on water quality and ecosystems

23. The applicant considers that the recorded decrease in water quality downstream of the discharge location is off set by the environmental benefits of augmenting the flow to ensure there is sufficient water to maintain fish habitat.
24. I refer you to the water quality section of the memo prepared by Dr Meredith who is Environment Canterbury's Principal Water Quality Scientist. As mentioned above, I have included a copy of this memo as Attachment 10 of Report 18A.
25. This section provides an in depth discussion of the benefits and disadvantages of the proposed discharge from the settling ponds.
26. In summary Dr Meredith agrees that the current bywash discharges are certainly more beneficial than there being no or negligible flows in the lower Stony River. However he considers the contaminants in the bywash water are obvious and detrimental to the values and potential value of Stony River. He advises that the activities are only permissible in the short term if at all – the operation needs

considerable further improvement to remove irrigation by-wash water and divert clean water into the lower reaches of the Stony River.

27. Given the memo provided by Dr Meredith, I cannot be certain that the effects on the environment over the 35 year duration sought will have minor effects on water quality and subsequently ecosystems.
28. The applicant may wish to address this area of concern and consider suitable mitigation to ensure effects will be minor.

Conclusion

29. With regard to s104(1)(a), the actual and potential effects of the activities have been discussed above. For this consent, I cannot confirm that under s104(1)(a), the actual and potential effects of the proposed activity are minor and acceptable when taking account the proposed mitigation. In particular, there is uncertainty regarding the potential effects on water quality and ecosystems, and potential effects on cultural values.

Statutory Assessment (s104(1)(b))

Regional Policy Statement (RPS)

30. Under Section 104(1)(b)(iii) of the RMA, the consent authority shall have regard to any relevant regional policy statement. The Canterbury Regional Policy Statement has been operative since 26 June 1998.
31. Of significance to these applications is Chapter 9, which relates to the management of the Region's water resources. The WCWARP and PNRRP take into account policies in the RPS and address the issues outlined in more detail. Any assessment of effects has been made using these documents and therefore I have had regard to the RPS throughout this assessment.

Proposed Natural Resources Regional Plan (PNRRP)

32. The objectives and policies of the PNRRP that are relevant to each potential adverse effect have been identified in the introductory s42A report. A discussion of the relevant objectives and policies is provided below.

(a) Objective WQL1.1 – Water quality outcomes for rivers

This objective aims to maintain and improve water quality, physical and chemical characteristics of the rivers. The proposed discharge from the settling-ponds will result in a decrease to the quality of water in Stony River at this location.

(b) Policy WQL1 – Point source discharges into surface water

This policy refers to consideration of whether the discharge is necessary, or whether other options are available. Consideration of the nature of the receiving river (Stony River is classified as natural), the assimilative capacity of the receiving body, effects on cultural values and ecosystems are also referred to. The proposed discharges are in the most appropriate location for the system, however the proposed settling-pond discharge will reduce water quality (Schedule WQL1 states water quality in 'natural' rivers or lakes should not be changed).

Mr de Joux has advised the proposed discharge from the settling ponds will reduce water quality in Stony River; however will be consistent with the outcomes required by this objective. While the water quality will decrease, there are positive effects on the Stony River ecosystem from the proposed discharge. As discussed in Report 18A the lower reaches of the river dries up, often leaving fish stranded and dying in remnant pools. The discharge into the lower reach of the river will prevent such occurrences.

Conclusion

33. With regard to s104(1)(b), the relevant provisions of the RPS and WCWARP have been considered above. I do not consider the proposed settling pond discharge is consistent with Objective WQL1.1 and Policy WLR 1 for the 35 year duration sought. Additionally I note there are a number of submissions to be heard in relation to this proposal.

Part II Purpose and Principals

Purpose of the RMA (s5)

34. Under Section 104, the consent authority must consider applications “subject to part II” of the RMA. The purpose of the RMA (Section 5(1)) is to:

“promote the sustainable management of natural and physical resources.”

35. Section 5(2) defines the meaning of “sustainable management”, which is to manage resources in a manner that provides for the social, economic and cultural wellbeing of communities while protecting the life-supporting capacity of the environment for the needs of future generations. This section also states that this should be achieved by “avoiding, remedying or mitigating” the adverse effects of activities.
36. The proposal will allow the development of land to occur, which may provide for the economic and social well-being of the community. The applicant however has not proposed measures to “avoid, remedy or mitigate” the potential impacts on surface water quality as required in Section 5(2)(c).

Matters of National Importance (s6)

37. Sub-sections (a) and (e) of Section 6 of the RMA is particularly relevant to this application. The proposed discharge from the settling pond may result in a change in water quality. Additionally I note Te Runanga o Waihao have submitted in opposition on this application.

Other Matters (Section 7)

38. In achieving the purpose of the RMA, the consent authority is directed to have particular regard to a number of matters as set out in (a) – (j) of Section 7.
39. Sub-sections (d) to (h) specifically relevant to this application. They relate to the intrinsic values of ecosystems, maintenance and enhancement of the quality of the environment, characteristics of natural and physical resources and the protection of the habitat of trout and salmon.
40. As discussed earlier, the proposed discharge from the settling pond may change the quality of water in Stony River. The discharge may also however augment the flow in the river to prevent fish from being stranded in remnant pools.

Principles of the Treaty of Waitangi (s8)

41. Section 8 of the RMA requires the consent authority to take into account the principles of the Treaty of Waitangi. The site lies within the rohe of Arowhenua and Waihao Runanga. Runanga were informed separately when ECan received the application and later when the application was notified. Submissions have been received from Te Runanga o Waihao on this application.

Particular restrictions for non-complying activities (s104D(1))

42. The proposed water permit is a non-complying activity and must be considered in the context of s104 of the RMA.
43. Section 104D outlines matters that must be considered when determining an application for a non-complying activity. This section states that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either, the adverse effects of the activity on the environment will be minor (s104D(a)(1)), or the application is for an activity that will not be contrary to the objectives and policies of the relevant plan (s104D(1)(b)).

S104D(1)(a)

44. As discussed in the assessment of effects section of this report, with the information provided to date, I am satisfied that the adverse effects of the proposed discharge from the headrace on the environment will be minor; however I am not satisfied the effects from the proposed discharge from the settling ponds will be minor; taking into account the proposed mitigation.

S104D(1)(b)

45. The proposed discharge will reduce the water quality of Stony River in the lower reaches. As such the proposed discharge of water into Stony River is contrary to Objective WQL1.1 and Policy WQL1 of the PNRRP.

RECOMMENDATION

Grant or Refuse

46. Section 104B applies to any application which is a non-complying activity and states that the consent authority may grant or refuse the application and may impose conditions under s108.
47. Having considered all relevant matters outlined in section 104D which contains particular restrictions for non-complying activities, I am not satisfied the adverse effects of the proposed activity on the environment will be minor, and the activity may be contrary to the objectives and policies of the PNRRP.
48. The applicant has requested a duration of 35 years. Given there are outstanding potential adverse effects, I am unable to provide comment in relation to duration as cannot determine the potential degree of effects.

RECOMMENDED CONDITIONS

49. Comments on the mitigation proposed by the applicant for each application are provided earlier in this report.

50. If the Commissioners decide to grant this application, I have included recommended draft conditions which are specific for this application below in Table 3. It is subject to these conditions that I consider potential adverse effects of the proposed activity to be minor.
51. A number of the conditions below have 'codes' located next to them. Please refer to Appendix 6 of the introductory report (Report 1) to view the conditions in full. Any proposal specific details or conditions are included below.
- 52.

Table 3 Recommended draft conditions for discharge permit CRC082271		
No.	Consent Code	Details
Scope		
1a	DP01	Headrace <i>Waterbody from:</i> Stony River <i>Waterbody to:</i> Stony River <i>Map reference:</i> NZMS 260 I39:9725-4524 <i>Discharge rate:</i> 40 litres per second <i>Plan:</i> "Haldon Station" (Attachment 1) <i>Other:</i> The water shall be water diverted from Stony River under CRC082269 and shall contain no contaminants.
1b	DP01	Settling pond <i>Waterbody from:</i> Stony River <i>Waterbody to:</i> Stony River <i>Map reference:</i> NZMS 260 I39:9204-4662 <i>Discharge rate:</i> 150 litres per second <i>Plan:</i> "Haldon Station" (Attachment 1) <i>Other:</i> The water shall be border-dyke bywash water.
Operation and Maintenance		
2	DP02	<i>Waterbody:</i> Stony River
3	LU13 modified	The discharge shall not occur in a manner likely to cause erosion of, or instability to, the banks or bed of Stony River; or reduce the flood-carrying capacity of the waterway.
4	DP03	
5	DP04	<i>Note applicable for both locations</i>
Administrative Conditions		
6	AD03	Review
7	AD04	Lapse date

Signed:



Date: 31 August 2009

Susannah Vesey
Consents Investigating Officer

REFERENCES

Canterbury Regional council 2004. Proposed Natural Resources Regional Plan – Chapter 4: Water Quality.

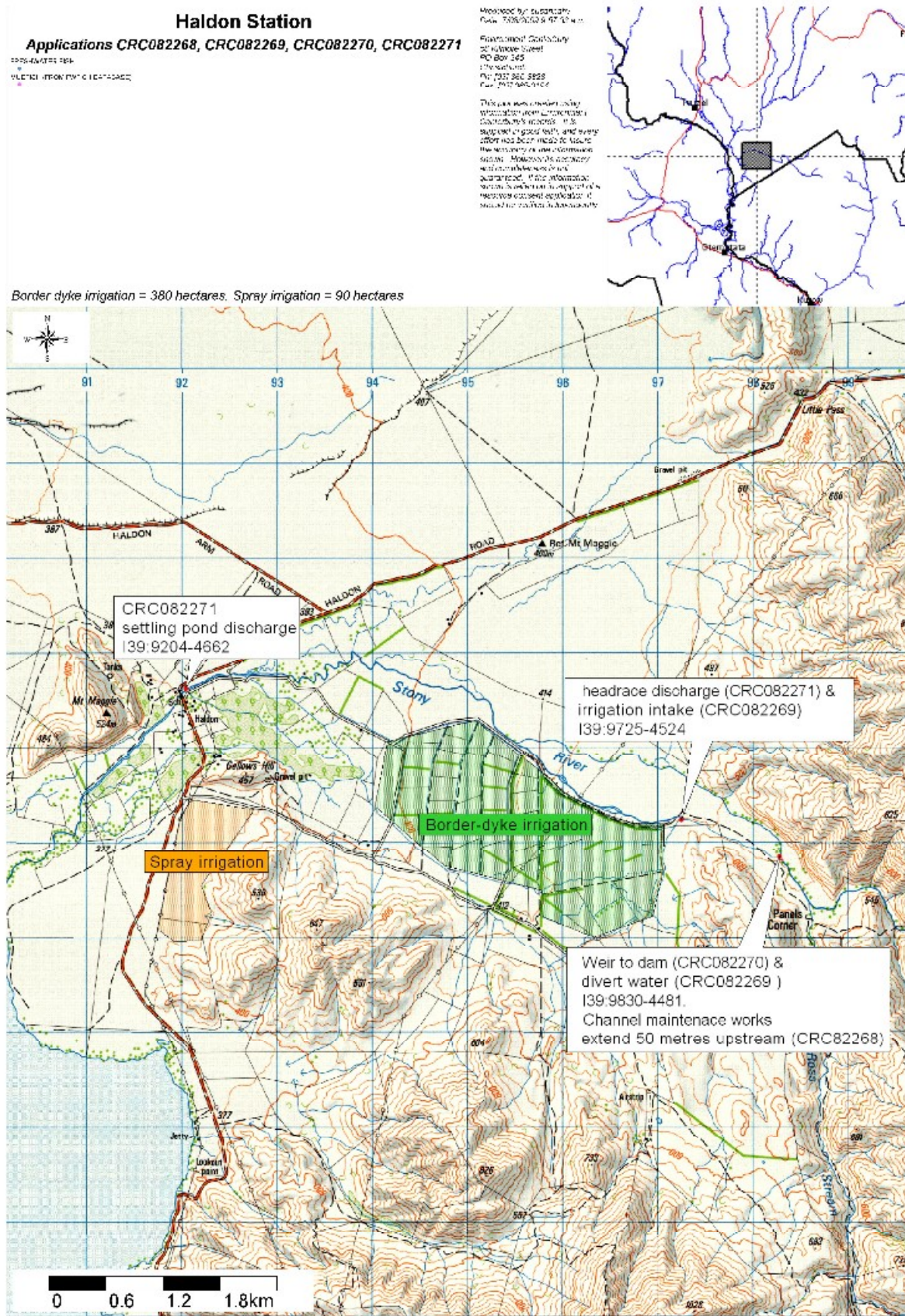
Canterbury Regional Council 1998. Regional Policy Statement. Report No R98/4. ISBN 1-86937-337-5.

Canterbury Regional Council 1991. Transitional Regional Plan. October 1991.

The Resource Management Act 1991. Consolidated version including the Resource Management Amendment Act 1995. August 2005.

Waitaki Catchment Water Allocation Board 2006. Waitaki Catchment Water Allocation Regional Plan. ISBN: 0-9582620-7-1.

ATTACHMENT ONE – LOCATION OF PROPOSED DISCHARGES



ATTACHMENT TWO – COPY OF EXISTING RESOURCE CONSENT

RecordNo WTK864681C.1

Type Consent

Source Full Transfer

PermitType Discharge Permit

FileNo CO6C/08033

ClientID 4728

ClientName Haldon Station Limited

To TO CONT DSCH SURP IRR WTR TO STONY R @MR & S109:924-557,924-558

Location , GLADSTONE

Status Continuation until new application determined

Events

- 11/Mar/1990 Given Effect To
- 12/Mar/1990 Lapse Date if not Given Effect To
- 10/Oct/1991 < Consent Transferred
- 04/Jul/2007 1st Expiry Reminder
- 16/Oct/2007 2nd Expiry Reminder
- 22/Jan/2008 Sec 124 continuation starts
- 30/Jun/2008 Consent Expires

Consent Summary

